Canada -- Laws, statutes, etc.

"THE PATENT ACT"

CANADA

REVISED MAY 2nd, 1898.

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An Act respecting Patents of invention, amended up to chap. 25, 60-61 Victoria, 1897.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

SHORT TITLE.

1. This Act may be cited as *The Patent Act.* 35 V., c. 26, s. 53. Short title.

INTERPRETATION.

2. In this Act, unless the context otherwise requires,— Interpretation.

(*a.*) The expression " the Minister " means the Minister of Agriculture ; "Minister."

(*b.*) The expression " Commissioner " means the Commissioner of Patents, and the expression " Deputy Commissioner " means the Deputy Commissioner of Patents ; "Commissioner." "Deputy Commissioner."

(*c.*) The expression " invention " means any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement in any art, machine, manufacture or composition of matter ; "Invention."

(*d.*) The expression " legal representatives " include heirs, executors, administrators and assigns or other legal representatives. "Legal representatives."

PATENT OFFICE AND APPOINTMENT OF OFFICERS.

3. There shall be attached to the Department of Agriculture, as a branch thereof, an office which will be called the Patent Office ; and the Minister of Agriculture for the time being shall be the Commissioner of Patents. 35 V., c. 26, s. 1, *part.* Patent Office constituted.

4. The commissioner shall receive all applications, fees, papers, documents and models for patents, and shall perform and do all acts and things requisite for the granting and issuing of patents of invention ; and he shall have the charge and custody of the books, records, papers, models, machines and other things belonging to the Patent Office. 35 V., c. 26, s. 1, *part.* Duties of the commissioner.

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5. The Deputy of the Minister of Agriculture shall be the deputy commissioner of Patents, and the Governor in Council may, from time to time, appoint such officers and clerks under the Deputy Commissioner as are necessary for the purposes of this Act, and such officers and clerks shall hold office during pleasure. 60-61 V. c. 25, s. 1.

al.

6. The Commissioner shall cause a seal to be made for the purposes of this Act, and may cause to be sealed therewith every patent and other instrument and copy thereof issuing from the Patent Office. 35 V., c. 26, s. 2, *part.*

APPLICATION FOR PATENTS.

Who may obtain patents.

7. Any person who has invented any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement in any art, machine, manufacture or composition of matter, which was not known or used by any other person before his invention thereof, and which has not been in public use or on sale with the consent or allowance of the inventor thereof, for more than one year previously to his application for patent therefor in Canada, may, on a petition to that effect, presented to the commissioner, and on compliance with the other requirements of this Act, obtain a patent granting to such person an exclusive property in such invention;

What may not be patented.

2. No patent shall issue for an invention which has an illicit object in view, or for any mere scientific principle or abstract therefrom. 35 V., c. 26, s. 6, *part.*

As to inventions for which foreign patents have been taken out.

8. Any inventor who elects to obtain a patent for his invention in a foreign country before obtaining a patent for the same invention in Canada, may obtain a patent in Canada, if the same be applied for within one year from the date of the issue of the first foreign patent for such invention; and, if within three months after the date of the issue of a foreign patent, the inventor gives notice to the commissioner of his intention to apply for a patent in Canada for such invention, then no other person having commenced to manufacture the same device in Canada during such period of one year, shall be entitled to continue the manufacture of the same after the inventor has obtained a patent therefor in Canada, without the consent or allowance of the inventor; and, under any circumstances, if a foreign patent exists, the Canadian patent shall expire at the earliest date on which any foreign patent for the same invention expires. 55-56 V., c. 24, s. 1.

Manufacture in Canada.

Expiry of Canadian patent.

Improvements may be patented.

9. Any person who has invented any improvement on any patented invention, may obtain a patent for such improvement; but he shall not thereby obtain the right of

vending or using the original invention, nor shall the patent for the original invention confer the right of vending or using the patented improvement. 35 V., c. 26, s. 9.

10. Every inventor shall, before a patent can be obtained, make oath, or, when entitled by law to make an affirmation instead of an oath, shall make an affirmation, that he verily believes that he is the inventor of the invention for which the patent is asked, and that the several allegations in the petition contained are respectively true and correct. Oath to be made by inventor.

2. In the event of the inventor being dead, such oath or affirmation shall be made by the applicant, and shall state that he verily believes that the person whose assignee or legal representative he is, was the inventor of the invention for which the patent is solicited, and that the several allegations in the petition contained are respectively true and correct. Or by the applicant if the inventor is dead.

3. Such oath or affirmation may be made before a minister plenipotentiary, *chargé d'affaires*, consul, vice-consul or consular agent, a judge of any court, a notary public, a justice of the peace, or the mayor of any city, borough or town, or a commissioner for taking affidavits, having authority or jurisdiction within the place where the oath may be administered. 55-56 V., c. 24, s. 2. Before whom inventor may make oath.

11. The applicant for a patent shall, for the purposes of this Act, elect his domicile at some known and specified place in Canada, and shall mention the same in his petition for a patent. 35 V., c. 26, s. 12. Domicile.

12. The applicant shall, in his petition for a patent, insert the title or name of the invention, and shall, with the petition, send in a specification in duplicate of the invention, and an additional or third copy of the claim or claims. 56 V., c. 34, s. 1. Requirements with regard to application.

13. The specification shall correctly and fully describe the mode or modes of operating the invention, as contemplated by the inventor; and shall state clearly and distinctly the contrivances and things which he claims as new and for the use of which he claims an exclusive property and privilege. What the specification shall show.

2. Such specification shall bear the name of the place where, and the date when it is made, and shall be signed by the inventor, if he is alive, and if not, by the applicant, and by two witnesses to such signature of the inventor or applicant. Place and date.

3. In the case of a machine, the specification shall fully explain the principle and the several modes in which it is intended to apply and work out the same. In the case of a machine.

Drawings to be furnished in certain cases.

4. In the case of a machine, or in any other case in which the invention admits of illustration by means of drawings, the applicant shall also, with his application, send in drawings in duplicate, showing clearly all parts of the invention, and each drawing shall bear the signatnre of the inventor, if he is alive, and if not, of the applicant, or of the attorney of such inventor or applicant, and shall have written references corresponding with the specification; but the commissioner may require further drawings or dispense with any of them, as he sees fit.

Drawings, how disposed of.

5. One duplicate of the specification and of the drawings, if there are drawings, shall be annexed to the patent, of which it shall form an essential part, and the other duplicate shall remain deposited in the Patent Office.

Certain matters may be dispensed with.

6. The commissioner may, in his discretion, dispense with the duplicate specification and drawing, and in lieu thereof cause copies of the specification and drawing, in print or otherwise, to be attached to the patent, of which they shall form an essential part. 35 V., c. 26, s. 14; 36 V., c. 44, s. 4.

Model to be furnished when required.

14. In all cases in which the invention admits of representation by model, the applicant, if required by the commissioner, shall furnish a model of convenient size, exhibiting its several parts in due proportion; and when the invention is a composition of matter, the applicant, if required by the commissioner, shall furnish specimens of the ingredients, and of the composition, sufficient in quantity for the purpose of experiment. If such ingredients or composition be of an explosive or dangerous character, they shall be furnished with such precautions as are prescribed in the requisition therefor. 55-56 V., c. 24, s. 3.

Or specimens.

Precautions to be taken with dangerous substances.

15. No application for a patent shall be withdrawn without the consent in writing of each and every registered assignee of such patent or any part thereof. 55-56 V., c, 24, s. 4.

REFUSAL TO GRANT PATENTS.

Commissioner may object to grant a patent in certain cases.

16. The commissioner may object to grant a patent in any of the following cases:—

(*a.*) When he is of opinion that the alleged invention is not patentable in law;

(*b.*) When it appears to him that the invention is already in the possession of the public, with the consent or allowance of the inventor;

(*c.*) When it appears to him that there is no novelty in the invention;

(*d.*) When it appears to him that the invention has been described in a book or other printed publication before the date of the application, or is otherwise in the possession of the public.

(*e.*) When it appears to him that the invention has already been patented in Canada or elsewhere, if the case is one within the eighth section of this Act, unless the commissioner has doubts as to whether the patentee or the applicant is the first inventor. 35 V., c. 26, s. 40.

Applicant to be notified.

17. Whenever the commissioner objects to grant a patent as aforesaid, he shall notify the applicant to that effect and shall state the ground or reason therefor, with sufficient detail to enable the applicant to answer, if he can, the objection of the commissioner. 35 Vic., c. 26, s. 41.

Appeal to Governor in Council.

18. Every applicant who has failed to obtain a patent by reason of the objection of the commissioner, as aforesaid, may, at any time within six months after notice thereof has been addressed to him or his agent, appeal from the decision of the commissioner to the Governor in Council. 35 V., c. 26, s. 42.

CONFLICTING APPLICATIONS.

Arbitration in case of conflicting applications.

19. In case of conflicting applications for any patent, the same shall be submitted to the arbitration of three skilled persons, two of whom shall be chosen by the applicants, one by each, and the third of whom shall be chosen by the commissioner or by the deputy commissioner, or by the person appointed to perform the duty of that officer; and the decision or award of such arbitrators, or of any two of them, delivered to the commissioner in writing, and subscribed by them or any two of them, shall be final, as far as concerns the granting of the patent.

Failure to appoint arbitrator.

2. If either of the applicants refuses or fails to choose an arbitrator, when required so to do by the commissioner, and if there are only two such applicants, the patent shall issue to the opposing applicant.

In certain cases commissioner may appoint.

3. If there are more than two conflicting applications, and if the persons applying do not all unite in appointing three arbitrators, the commissioner or the deputy commissioner or person appointed to perform the duty of that officer, may appoint the three arbitrators for the purposes aforesaid.

Arbitrators to be sworn.

4. The arbitrators so named shall subscribe and take, before a judge of any court of record in Canada, an oath in the form following, that is to say :—

Form of oath.

" I, the undersigned (*A.B.*), being duly appointed an arbitrator under the authority of *The Patent Act*, do hereby solemnly swear (*or affirm, as the case may be*), that

I will well and truly perform the duty of such arbitrator on the conflicting applications of (*C. D. and E. F.*) submitted to me."

Powers of the arbitrators.

5. The arbitrators, or any one of them, when so sworn, may summon before them any applicant or other person, and may require him to give evidence on oath, orally or in writing (*or on solemn affirmation, if such applicant or person is entitled to affirm in civil cases*), and to produce such documents and things as such arbitrators deem requisite to the full investigation of the matters into which they are appointed to examine, and they shall have the same power to enforce the attendance of such applicants and other persons, and to compel them to give evidence, as is vested in any court of justice in civil cases, in the province in which the arbitration is held: but no such applicant or person shall be compelled to answer any question, by his answer to which he might render himself liable to a criminal prosecution.

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Their remuneration.

6. The fees for the services of such arbitrators shall be a matter of agreement between the arbitrators and the applicants, and shall be paid by the applicants who name them, respectively, except those of the arbitrator or arbitrators named by the commissioner, which shall be paid by the applicants jointly. 35 V., c. 26, s. 43, *part.*

GRANT AND DURATION OF PATENTS.

What the patent shall contain and confer.

20. Every patent granted under this Act shall contain the title or name of the invention, with a reference to the specification, and shall grant to the patentee and his legal representatives, for the term therein mentioned, from the granting of the same, the exclusive right, privilege and liberty of making, constructing and using, and vending to others to be used, the said invention, subject to adjudication in respect thereof before any court of competent jurisdiction.

Joint applications.

2. In cases of joint applications, the patents shall be granted in the names of all the applicants. 35 V., c. 26, s. 10, *part, and* s. 16;—36 V., c 44, s. 5.

Form of issue of patent.

21. Every patent shall be issued under the seal of the Patent Office and the signature of the commissioner or of the deputy commissioner, and when duly registered shall be good, and shall avail the grantee and his legal representatives for the term mentioned in the patent. 56 V., c. 34, s. 2.

Patent may be referred to the Minister of Justice.

2. The commissioner may require that any patent, before it is signed by the commissioner or by any other member of the Queen's Privy Council for Canada, acting for him, and before the seal hereinbefore mentioned is affixed to it, shall

be examined by the Minister of Justice; and if such examination is so required, the Minister of Justice shall, accordingly, examine it, and if he finds it conformable to law, he shall certify accordingly, and such patent may then be signed, and the seal affixed thereto. 35 V., c. 26, s. 6, *part, and* s. 18.

22. The term limited for the duration of every patent of invention issued by the Patent Office shall be eighteen years; but at the time of the application therefor it shall be at the option of the applicant to pay the full fee required for the term of six years, or the partial fee required for the term of twelve years. 55-56 V., c. 24, s. 5. Duration of patent.

2. If a partial fee only is paid, the proportion of the fee paid shall be stated in the patent, and the patent shall, notwithstanding anything therein or in this Act contained, cease at the end of the term for which the partial fee has been paid, unless before the expiration of the said term the holder of the patent pays the fee required for the further term of six or twelve years, and obtains from the Patent Office a certificate of such payment in the form which is, from time to time, adopted, which certificate shall be attached to and refer to the patent, and shall be under the signature of the commissioner or of the deputy commissioner. 56 V., c. 34, s. 3. If partial fe only is paid.

3. If such second payment, together with the first payment, makes up only the fee required for twelve years, then the patent shall, notwithstanding anything therein or in this Act contained, cease at the end of the term of twelve years, unless at or before the expiration of such term the holder thereof pays the further fee required for the remaining six years, making up the full term of eighteen years, and obtains a like certificate in respect thereof. 55-56 V., c. 24, s. 5. Effect of further payment

RE-ISSUE OF PATENTS.

23. Whenever any patent is deemed defective or inoperative by reason of insufficient description or specification, or by reason of the patentee claiming more than he had a right to claim as new, but at the same time it appears that the error arose from inadvertence, accident or mistake, without any fraudulent or deceptive intention, the commissioner may, upon the surrender of such patent and the payment of the further fee hereinafter provided, cause a new patent, in accordance with an amended description and specification made by such patentee, to be issued to him for the same invention for any part or for the whole of the then unex- In certain cases new patent or amended specification may be issued

N.B.—Section 22 and its subsections apply only to patents granted after 9th July, 1892.

pired residue of the term for which the original patent was, or might have been granted.

Death or assignment.

2. In the event of the death of the original patentee or of his having assigned the patent, a like right shall vest in his assignee or his legal representatives.

Effect of new patent.

3. Such new patent, and the amended description and specification, shall have the same effect in law, on the trial of any action thereafter commenced for any cause subsequently accruing, as if the same had been originally filed in such corrected form before the issue of the original patent.

Separate patents for separate parts of invention.

4. The commissioner may entertain separate applications, and cause patents to be issued for distinct and separate parts of the invention patented, upon payment of the fee for a re-issue for each of such re-issued patents. 35 V., c. 26, s. 19 ;—38 V., c. 14, s. 1.

DISCLAIMERS.

Patentee may disclaim anything included in patent by mistake.

24. Whenever, by any mistake, accident or inadvertence, and without any wilful intent to defraud or mislead the public, a patentee has made his specification too broad, claiming more than that of which he or the person through whom he claims was the first inventor,—or has, in the specification, claimed that he or the person through whom he claims was the first inventor of any material or substantial part of the invention patented, of which he was not the first inventor, and to which he had no lawful right —the patentee may, on payment of the fee hereinafter provided, make disclaimer of such parts as he does not claim to hold by virtue of the patent or the assignment thereof.

Form and attestation of disclaimer.

2. Such disclaimer shall be in writing, and in duplicate, and shall be attested in the manner hereinbefore prescribed in respect of an application for a patent ; one copy thereof shall be filed and recorded in the office of the commissioner, and the other copy thereof shall be attached to the patent and made a part thereof by reference, and such disclaimer shall, thereafter be taken and considered as part of the original specification.

Not to affect pending suits.

3. Such disclaimer shall not affect any action pending at the time of its being made, except in so far as relates to the question of unreasonable neglect or delay in making it.

In case of death of patantee.

4. In case of the death of the original patentee, or of his having assigned the patent, a like right shall vest in his legal representatives, any of whom may make disclaimer.

Effect of disclaimer.

5. The patent shall thereafter be deemed good and valid for so much of the invention as is truly the invention of the disclaimant, and is not disclaimed, if it is a material and substantial part of the invention, and is definitely distinguished from other parts claimed without right ; and

the disclaimant shall be entitled to maintain an action or suit in respect of such part accordingly. 35 V., c. 26, s. 20.

ASSIGNMENTS.

25. The patent may be granted to any person to whom the inventor, entitled under this Act to obtain a patent, has assigned or bequeathed the right of obtaining the same, or in default of such assignment or bequest, to the legal representatives of the deceased inventor. 35 V., c. 26, s. 8;—36 V., c. 44, s. 2.

When representatives may obtain the patent.

26. Every patent issued for an invention shall be assignable in law, either as to the whole interest or as to any part thereof, by any instrument in writing; but such assignment, and every grant and conveyance of any exclusive right to make and use and to grant to others the right to make and use the invention patented, within and throughout Canada or any part thereof, shall be registered in the Patent Office in the manner, from time to time, prescribed by the commissioner for such registration; and every assignment affecting a patent for invention shall be null and void against any subsequent assignee, unless such instrument is registered as hereinbefore prescribed, before the registration of the instrument under which such subsequent assignee claims. 35 V., c. 26 s. 22.

Patents to be assignable.

Registration.

Assignment null if not registered.

27. In cases of joint applications or grants, every assignment from one or more of the applicants or patentees to the other or others, or to any other person, shall be registered in like manner as other assignments. 35 V.. c. 26, s. 10, *part.*

Assignment in case of joint application, &c.

IMPEACHMENT AND OTHER LEGAL PROCEEDINGS IN RESPECT OF PATENTS.

28. A patent shall be void, if any material allegation in the petition or declaration of the applicant hereinbefore mentioned in respect of such patent is untrue, or if the specifications and drawings contain more or less than is necessary for obtaining the end for which they purport to be made, when such omission or addition is wilfully made for the purpose of misleading; but if it appears to the court that such omission or addition was an involuntary error, and if it is proved that the patentee is entitled to the remainder of his patent *pro tanto*, the court shall render a judgment in accordance with the facts, and shall determine as to costs, and the patent shall be held valid for such part of the invention described, as the patentee is so found entitled to; and two office copies of such judgment shall

Patent to be void in certain cases, or valid only for part.

Copies of judgment to be sent to Patent Office.

be furnished to the Patent Office by the patentee, one of which shall be registered and remain of record in the office, and the other of which shall be attached to the patent, and made a part of it by a reference thereto. 35 V., c. 26, s. 27.

Remedy for infringement of patent.

29. Every person who, without the consent in writing of the patentee, makes, constructs or puts in practice any invention for which a patent has been obtained under this Act, or any previous Act, or who procures such invention from any person not authorized by the patentee or his legal representatives to make use of it, and who uses it, shall be liable to the patentee, or his legal representatives, in an action of damages for so doing; and the judgment shall be enforced, and the damages and costs that are adjudged shall be recoverable, in like manner, as in other cases in the court in which the action is brought. 35 V., c. 26, s. 23.

Action for infringement of patent.

30. Any action for the infringement of a patent may be brought in any court of record having jurisdiction, to the amount of the damages claimed, in the province in which the infringement is alleged to have taken place, and which is also that one of the said courts which holds its sittings nearest to the place of residence or of business of the defendant: and such court shall decide the case and determine as to costs 35 V. c. 26, s. 24, *part.*

Injunction may issue.

31. In any action for the infringement of a patent, the court if sitting, or any judge thereof if the court is not sitting, may, on the application of the plaintiff or defendant respectively, make such order for an injunction, restraining the opposite party from further use, manufacture or sale of the subject matter of the patent, and for his punishment in the event of disobedience of such order, or for inspection or account, and respecting the same and the proceedings in the action, as the court or judge sees fit; but from such order, an appeal shall lie under the same circumstances, and to the same court, as from other judgments or orders of the court in which the order is made. 35 V., c. 26, s. 24 *part.*

Appeal.

Court may discriminate in certain cases.

32. Whenever the plaintiff, in any such action, fails to sustain his action, because his specification and claim embrace more than that of which he was the first inventor, and it appears that the defendant used or infringed any part of the invention justly or truly specified and claimed as new, the court may discriminate, and the judgment may be rendered accordingly. 35 V., c. 26, s. 25.

Defence in actions for infringement.

33. The defendant, in any such action, may plead specially as a matter of defence, any fact or default which, by

this act, or by law, renders the patent void; and the court shall take cognizance of that special pleading and of the facts connected therewith, and shall decide the case accordingly. 35 V., c. 26, s. 26.

Proceedings for impeachment of patent.

34. Any person who desires to impeach any patent issued under this Act, may obtain a sealed and certified copy of the patent and of the petition, affidavit, specification and drawings thereunto relating, and may have the same filed in the office of the prothonotary or clerk of the Superior Court for Lower Canada in Quebec, or of any of the divisions of the High Court of Justice for Ontario, or of the Supreme Court in Nova Scotia, or of the Supreme Court in New Brunswick, or of the Supreme Court of Judicature in Prince Edward Island, or of the Supreme Court in British Columbia, or of the Court of Queen's Bench in Manitoba, or of the Supreme Court in the North-west Territories, according to the domicile elected by the patentee, as aforesaid, or in the office of the registrar of the Exchequer Court of Canada,—which courts, respectively, shall adjudicate on the matter and decide as to costs; and if the domicile elected by the patentee is in the district of Keewatin, the Court of Queen's Bench of Manitoba shall have jurisdiction until there is a superior court in such district, after which such Superior Court shall have jurisdiction. 53 V., c. 13, s. 1.

Scire facias may issue.

2. The patent and documents aforesaid shall then be held as of record in such courts respectively, so that a writ of *scire facias*, under the seal of the court, grounded upon such record, may issue for the repeal of the patent, for cause as aforesaid, if, upon proceedings had upon the writ in accordance with the meaning of this Act, the patent is adjudged to be void. 35 V., c. 26, s 29;—37 V., c. 44, s. 1;—38 V., c. 14, s. 8;—49 V., c. 25, s. 14.

Judgment voiding patent to be filed in Patent Office.

35. A certificate of the judgment avoiding any patent shall, at the request of any person filing it to make it of record in the Patent Office, be entered on the margin of the enrolment of the patent in the Patent Office, and the patent shall thereupon be, and be held to have been, void and of no effect, unless the judgment is reversed on appeal as hereinafter provided. 35 V., c. 26. s. 30.

Appeal.

36. The judgment declaring or refusing to declare any patent void shall be subject to appeal to any court having appellate jurisdiction in other cases decided by the court by which the judgment declaring or refusing to declare such patent void, was rendered. 35 V., c. 26, s. 31.

FORFEITURE OF PATENTS.

Conditions patent.

37. Every patent granted under this Act shall be subject, and be expressed to be subject, to the following conditions:—

Manufacture in Canada.

(*a.*) That such patent and all the rights and privileges thereby granted shall cease and determine, and that the patent shall be null and void at the end of two years from the date thereof, unless the patentee or his legal representatives, or his assignee, within that period or any authorized extension thereof, commence, and after such commencement, continuously carry on in Canada, the construction or manufacture of the invention patented, in such a manner that any person desiring to use it may obtain it, or cause it to be made for him at a reasonable price, at some manufactory or establishment for making or constructing it in Canada;

Importation into Canada.

(*b.*) That if, after the expiration of twelve months from the granting of a patent, or any authorized extension of such period, the patentee or patentees, or any of them, or his or their representatives, or his or their assignee, for the whole or a part of his or their interest in the patent, imports, or causes to be imported into Canada, the invention for which the patent is granted, such patent shall be void as to the interest of the person or persons importing or causing to be imported as aforesaid:

Jurisdiction of Exchequer Court in such ases.

2. (*a.*) Any question which arises as to whether a patent, or any interest therein, has or has not become void: under the provisions of this section, may be adjudicated upon by the Exchequer Court of Canada, which court shall have jurisdiction to decide any such question upon information in the name of the Attorney General of Canada, or at the suit of any person interested:

Jurisdiction of other courts not ousted.

3. (*b.*) This section shall not be held to take away or affect the jurisdiction which any court other than the Exchequer Court of Canada possesses. 55-56 V., c. 24, s. 6.

Term for manufacture in Canada may be extended.

2. Whenever a patentee has been unable to carry on the construction or manufacture of his invention within the two years hereinbefore mentioned, the commissioner may, at any time not more than three months before the expiration of that term, grant to the patentee an extension of the term of two years on his proving to the satisfaction of the commissioner that he was, for reasons beyond his control, prevented from complying with the above condition:

Time for importation may be extended.

3. The commissioner may grant to the patentee, or to his legal representatives or assignee for the whole or any part of the patent, an extension for a further term not exceeding one year, beyond the twelve months limited by this section, during which he may import or cause to be imported into Canada the invention for which the patent is granted, if the patentee or his legal representatives, or assignee for the whole or any part of the patent, show cause, satisfactory to the commissioner, to warrant the granting of such extension; but no extension shall be granted unless application is made to the commissioner at some time within three

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months before the expiry of the twelve months aforesaid. or of any extension thereof. 35 V., c. 26, s. 28;—38 V., c. 14, s. 2;—45 V., c. 22, s. 1.

CAVEATS.

38. Any intending applicant for a patent who has not yet perfected his invention and is in fear of being despoiled of his idea, may file, in the Patent Office, a description of his invention so far, with or without plans, at his own will; and the commissioner, on payment of the fee in this Act prescribed, shall cause the said document, which shall be called a Caveat, to be preserved in secrecy, with the exception of delivering copies of the same whenever required by the said applicant or by any judicial tribunal, but the secrecy of the document shall cease when the applicant obtains a patent for his invention: Intending applicant for patent may file a caveat.

2. If application is made by any other person for a patent for any invention with which such caveat may, in any respect, interfere, the commissioner shall forthwith give notice, by mail, of such application, to the person who has filed such caveat, and such person shall, within three months after the date of mailing the notice, if he wishes to avail himself of the caveat, file his petition and take the other steps necessary on an application for a patent, and if, in the opinion of the commissioner, the applications are conflicting, like proceedings may be had in all respects as are by this Act provided in the case of conflicting applications: Notice of application by another to be sent to person filing caveat.

3. Unless the person filing a Caveat makes application within one year from the filing thereof for a patent, the commissoner shall be relieved from the obligation of giving notice, and the caveat shall then remain as a simple matter of proof as to novelty or priority of invention, if required. 35 V., c. 26, s. 39. Duration of caveat.

PATENT FEES.

39. The following fees shall be payable before an application for any of the purposes herein mentioned shall be received by the Commissioner, that is to say,— Tariff of fees

	$ cts.
Full fee for 18 years	60 00
Partial fee for 12 years	40 00
Partial fee for 6 years	20 00
Fee for further term of 12 years	40 00
Fee for further term of 6 years	20 00
On lodging a Caveat	5 00
On asking to register a judgment *pro tanto*	4 00

On asking to register an assignment or any other document affecting or relating to a patent, and for each and every patent mentioned in the notice given under section eight of this Act. 56 V., c. 34, s. 4.....	2 00
On asking to attach a disclaimer to a patent.....	2 00
On asking for a copy of patent with specification.....	4 00
On petition to reissue a patent after surrender, and on petition to extend a former patent to the whole of Canada for every unexpired year of the duration of the provincial or sub-patent, the fee shall be at the rate of.....	4 00

On office copies of documents, not above mentioned, the following charges shall be made :—

For every single or first folio of certified copy.....	0 25
For every subsequent hundred words (fractions from and under fifty not being counted, and over fifty being counted for one hundred.) 55-56 V., c. 24, s. 7.....	0 10

For copies of drawings.

40. For every copy of drawings, the person applying shall pay such sum as the commissioner considers a fair remuneration for the time and labour expended thereon by any officer of the Patent Office or the department or person employed to perform such service. 35 V., c. 26, s. 35.

Fees to be in full for all services.

41. The said fees shall be in full of all services performed under this Act, in any such case, by the commissioner or any person employed in the Patent Office. 35 V., c. 26, s. 36.

Application of fees.

Exception.

42. All fees received under this Act shall be paid over to the Minister of Finance and Receiver General, and shall form part of the Consolidated Revenue Fund of Canada, except such sums as are paid for copies of drawings when made by persons not receiving salaries in the Patent Office. 35 V., c. 26, s. 37.

Return of fees in certain cases only.

43. No person shall be exempt from the payment of any fee or charge payable in respect of any services performed for such person under this Act ; and no fee, when paid, shall be returned to the person who paid it, except,—

(*a*) When the invention is not susceptible of being patented; or—

(*b*) When the petition for a patent is withdrawn:

And in every such case the commissioner may return the fee paid less the sum of ten dollars. 35 V., c. 38.

GENERAL PROVISIONS.

44. The Government of Canada may, at any time, use any patented invention, paying to the patentees such sum as the commissioner reports to be a reasonable compensation for the use thereof. 35 V., c. 26, s. 21.

Government may use patented invention.

45. No patent shall extend to prevent the use of any invention in any foreign ship or vessel, if such invention is not so used for the manufacture of any goods to be vended within or exported from Canada. 35 V., c. 26, s. 47.

As to use patented vention in foreign vessels.

46. Every person who, before the issuing of a patent, has purchased, constructed or acquired any invention for which a patent is afterwards obtained under this Act, shall have the right of using and vending to others the specific article, machine, manufacture or composition of matter patented and so purchased, constructed or acquired before the issue of the patent therefor, without being liable to the patentee or his legal representatives for so doing; but the patent shall not, as regards other persons, be held invalid by reason of such purchase, construction or acquisition or use of the invention, by the person first aforesaid, or by those to whom he has sold the same, unless the same was purchased, constructed, acquired or used, with the consent or allowance of the inventor thereof, for a longer period than one year before the application thereof for a patent thereof —making the invention one which has become public and in public use. 35 V., c. 20, s. 48.

Patent not to affect a previous purchaser.

Proviso: as to other persons.

47. All specifications, drawings, models, disclaimers, judgments and other papers, except Caveats, shall be open to the inspection of the public at the Patent Office, under such regulations as are adopted in that behalf. 35 V., c. 26, s. 44.

Inspection by the public.

48. Clerical errors which occur in the framing or copying of any instrument in the Patent Office shall not be construed as invalidating the same, but when discovered they may be corrected under the authority of the commissioner. 35 V., c. 26, s. 45.

As to clerical error.

49. If any patent is destroyed or lost, a certified copy thereof may be issued in lieu thereof, upon the person who

Destroyed patent may be replaced.

applies therefor paying the fees hereinbefore prescribed for office copies of documents. 25 V., c. 26, s. 46;—53 V., c. 13, s. 4.

Seal of Patent Office to be evidence.

50. Every court, judge and person whomsoever shall take notice of the seal of the Patent Office and shall receive the impressions thereof in evidence, in like manner as the impressions of the Great Seal are received in evidence, and shall also take notice of and receive in evidence, without further proof and without production of the originals, all copies or extracts certified under the seal of the Patent Office to be copies of or extracts from documents deposited in such office. 35 V., c. 26, s. 2, *part.*

Officers of Patent Office not to deal in patents.

51. No officer or employee of the Patent Office shall buy, sell or acquire or traffic in any invention or patent, or in any right to a patent; and every such purchase and sale, and every assignment or transfer thereof by or to any officer or employee, as aforesaid, shall be null and void, but this provision shall not apply to any original inventor, or to any acquisition by bequest. 35 V., c. 26, s. 4, *part.*

Regulations may be made and forms prescribed.

52. The commissioner may, from time to time, subject to the approval of the Governor in Council, make such rules and regulations, and prescribe such forms, as appear to him necessary and expedient for the purposes of this Act,—and notice thereof shall be given in the *Canada Gazette;* and all documents, executed in conformity with the same and accepted by the commissioner, shall be held valid, so far as relates to proceedings in the Patent Office. 35 V., c. 26, s. 3.

Annual report for Parliament.

53. The commissioner shall cause a report to be prepared annually and laid before Parliament of the proceedings under the Act, and shall, from time to time, and at least once in each year, publish a list of all patents granted, and may, with the approval of the Governor in Council, cause such specifications and drawings as are deemed of interest, or essential parts thereof, to be printed, from time to time, for distribution or sale. 35 V., c. 26, s. 5; 36 V., c. 44, s. 1.

OFFENCES AND PENALTIES.

Patented articles to be stamped or marked.

54. Every patentee under this Act shall stamp or engrave on each patented article sold or offered for sale by him the year of the date of the patent applying to such article, thus: "Patented, 1898," or as the case may be; or when, from the nature of the article, this cannot be done, then by affixing to it, or to every package wherein one or more of such articles is or are inclosed, a label marked with a like

notice; and any such patentee selling or offering for sale any such patented article not so marked, or not inclosed in a package so marked, shall be liable to a penalty not exceeding one hundred dollars, and in default of the payment of such penalty, to imprisonment for a term not exceeding two months. 38 V., c. 14, s. 3.

Penalty for default.

55. Every person who writes, paints, prints, moulds, casts, carves, engraves, stamps or otherwise marks upon anything made or sold by him, and for the sole making or selling of which he is not the patentee, the name or any imitation of the name of any patentee for the sole making or selling of such thing, without the consent of such patentee,—or who, without the consent of the patentee, writes, paints, prints, moulds, casts, carves, engraves, stamps or otherwise marks upon anything not purchased from the patentee, the words, "patent," "letters patent," "Queen's patent," "patented," or any word or words of like import, with the intent of counterfeiting or imitating the stamp, mark or device of the patentee, or of deceiving the public and inducing them to believe that the thing in question was made or sold by or with the consent of the patentee or his legal representatives; or who offers for sale as patented any article not patented in Canada, for the purpose of deceiving the public, is guilty of a misdemeanour, and liable to a fine not exceeding two hundred dollars, or to imprisonment for a term not exceeding three months, or to both. 35 V., c. 26, s. 50.

Falsely marking an article as patented, a misdemeanour

Punishment.

56. Every person who wilfully makes or causes to be made any false entry in any register or book, or any false or altered copy of any document relating to the purposes of this Act, or who produces or tenders any such false or altered document in evidence, knowing the same to be such, is guilty of a misdemeanour, and shall be liable to be punished by a fine and imprisonment accordingly. 35 V., c. 26, s. 51.

Making certain false entries on copies, a misdemeanour.

PATENTS ISSUED UNDER FORMER ACTS.

57. Every patent issued under any Act of the Parliament of Canada, or of the legislature of the late province of Canada, or of the legislature of any province now forming part of Canada, shall remain in force for the same term and for the same extent of territory as if the Acts under which they were issued had not been repealed, but subject to the provisions of this Act in so far as the same are applicable to them:

Certain existing patents to remain in force.

2. The commissioner may, upon the application of the patentee named in any such patent, who is the inventor of

Extension of such patent.

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the subject matter of the patent, if the subject matter of th patent has not been known or used, and has not, with th consent of the patentee, been on sale in any of the othe provinces of Canada, issue, on payment of the proper fee in that behalf, a patent under this Act, extending suc provincial patent over the whole of Canada, for the remain der of the term mentioned in the provincial patent. 35 V c. 26, s. 32 ; 38 V., c. 14, s. 6.

Duration of certain patents.

58. Every patent heretofore issued by the Patent Offic in respect of which the fee required for the whole or for an unexpired portion of the term of fifteen years, has been dul paid according to the provisions of the law under whic such patent was issued in that behalf, has been and shal be deemed to have been issued for the term of fifteen years subject, in case a partial fee only has been paid, to its ceas ing on the same conditions on which patents hereafte issued are to cease under the operation of this Act. 46 V c. 19, s. 1, *part.*

Extension to Prince Edward Island.

59. Every patent issued prior to the eighth day of April one thousand eight hundred and seventy-five, under th Acts respecting patents then in force in Canada, shal extend over the province of Prince Edward Island for th remainder of the term mentioned therein. 38 V., c. 14, s 4, *part.*

Examination of applications for patents.

On each application for a patent, a thorough and reliabl examination shall be made by competent examiners to b employed in the Patent Office for that purpose. 8 of Ca 25, 55-56 Vic., 1892.